

Record: 1

Title: Moving to minimise tax? James Hardie cannot be serious
Authors: Elizabeth Knight
Source: Age, The (Melbourne); 17/06/2009
Abstract: The company must stop seeking shortcuts to making money.
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Moving to minimise tax? James Hardie cannot be serious

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Elizabeth Knight

The company must stop seeking shortcuts to making money.

IT BEGGARS belief that after 20 or more years of attempting to skirt its obligations to various tax authorities and asbestos victims that James Hardie would even consider moving its corporate domicile to another country to minimise its tax obligations.

The bulk of its shareholders reside in Australia and the overwhelming majority of its assets lie in the US. But reports this week (which the company has not denied) suggest that it is looking to move its domicile from the Netherlands to Ireland, which has a 12.5 per cent corporate tax rate.

This is the pin-up poster company for ethical investment because its attempts to avoid its corporate responsibility have cost it money and reputation.

In April, the NSW Supreme Court found that 10 former directors and executives broke the law by approving and issuing misleading statements about the funding of compensation payments to asbestos sufferers.

It has also recently had to pay \$153 million to the Australian Taxation Office to settle a dispute around income declared over its restructure of the company and its move to the Netherlands.

At the time the chief executive, Peter Macdonald, said that over the long term the company's rate would fall to 25 to 30 per cent and savings would amount to \$30 million a year.

The move to the Netherlands was also viewed as a means to escape its obligations to compensate asbestos victims.

The trouble is that the Netherlands relocation ultimately satisfied neither of these ambitions. Tax laws in the Netherlands were changed and the loophole was closed.

The Tax Office sought to recover what it had lost and the NSW Government forced the company to compensate asbestos victims.

Most companies that resort to these extreme measures in an attempt to maximise returns to shareholders do so because they have a poor underlying business.

This isn't the case with James Hardie. Sure, it's doing it tough right now in the US building materials market, but it is in a cyclical downturn. In a general sense, James Hardie has performed exceptionally well in this market. It has developed new products and taken market share from its larger competitors.

The only thing it is bad at is being bad. But there is something in the DNA of this company. The past 20 years have seen several changes in management and boards. But still it looks for shortcuts to making money.

The current governors have had nothing to do with the ethically-challenged behaviour of their predecessors. They have been cleaning up the mess and working with one hand tied behind their backs thanks to these legacy issues.

**Record: 1**

**Title:** Charges likely over James Hardie deception  
**Authors:** Elisabeth Sexton  
**Source:** Age, The (Melbourne); 22/09/2004  
**Abstract:** Australia's largest asbestos manufacturer seriously misled the community when it set up a charitable foundation to compensate victims of the deadly fibre in 2001, it has been found.  
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**Charges likely over James Hardie deception**

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Elisabeth Sexton
PHOTO

Australia's largest asbestos manufacturer seriously misled the community when it set up a charitable foundation to compensate victims of the deadly fibre in 2001, it has been found.

A NSW Government inquiry has found grounds for criminal charges and evidence of misleading and deceptive conduct by James Hardie Industries and its senior executives.

The head of the inquiry, David Jackson, QC, said there was "no fundamental legal impediment" to the company's original aim of cutting its ties to asbestos. The problem was that it set aside "the cheapest provision thought marketable" while publicly describing the foundation as "fully funded". This misconduct meant the company could be sued for damages, but it would be difficult to recover all the possible \$2 billion shortfall facing the foundation. It is likely to run out of money by early 2007.

Mr Jackson identified problems with legislation to target Hardie and said a recent company offer of voluntary payments was probably the best solution.

He said that regardless of the legal position, Hardie would have continued to pay compensation if it had not transferred its former asbestos-producing subsidiaries to the foundation.

"In my opinion, it is right" that the company made its recent offer to meet the shortfall, he said. "Why should the victims and the public bear the cost not provided for? To put it directly, (Hardie) still has in its pockets the profits made by dealing in asbestos, and those profits are large enough to satisfy most, perhaps all, of the claims of victims of James Hardie asbestos."

The key finding is that Hardie chief executive Peter Macdonald knew a news release saying the foundation was "fully funded" on expert advice was "false in material particulars and materially misleading".

The release, issued to the stock exchange and so likely to affect trading in Hardie shares, was evidence of a criminal offence, Mr Jackson said. It was now up to the authorities to decide whether to press charges "and if so, against whom".

Mr Jackson was also critical of Hardie chief financial officer Peter Shafron, saying he and Mr Macdonald contravened misleading and deceptive conduct provisions of the NSW Fair Trading Act. Mr Shafron, "prepared to be deceitful where asbestos was concerned", had withheld crucial data from Trowbridge Deloitte, the firm of actuaries advising Hardie on the likely cost of future claims, Mr Jackson said.

A spokeswoman for the Australian Securities and Investments Commission said it would immediately review the findings.

Mr Jackson also said Trowbridge fell below standards of professional care and engaged in misleading conduct when it let incoming directors of the foundation rely on its work.

The other key adviser, law firm Allens Arthur Robinson, was likely to have breached its duty of care to its client because James Hardie did not disclose all it should have when it sought NSW